

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
A La Carte and Themed Tier Programming)	MB Docket No. 04-207
and Pricing Options for Programming)	
Distribution on Cable Television and Direct)	
Broadcast Satellite Systems)	

REPLY COMMENTS OF RCN CORPORATION

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Dated: August 11, 2004

INTRODUCTION

RCN Corporation (“RCN”), through its subsidiaries and affiliates, is the nation’s largest terrestrial broadband service provider– a company that provides wireline cable television, telephone, and high-speed Internet access services primarily to residential customers. RCN offers its services over its own fiber optic network, in competition with the incumbent cable and telephone companies. RCN is a multi-channel video programming distributor (“MVPD”) that provides competitive, bundled telecommunications services in the Boston, New York, Philadelphia, Lehigh Valley, Washington, D.C., Chicago, San Francisco and Los Angeles markets. As such, RCN has long been on the front lines of cable competition and the ongoing battle over access to video programming on competitively neutral terms and conditions. Pursuant to the Notice of Inquiry (“NOI”) released by the Commission in the above-captioned matter on May 25, 2004,¹ RCN, by the undersigned counsel, is pleased to submit these Reply Comments in this proceeding.

CONSUMERS DESERVE COMPETITION, CHOICE, AND CONTROL

As numerous commenters argued in the initial comments filed in this proceeding, the current, established models for programming distribution in the cable industry no longer adequately meet the needs and desires of cable consumers. Rather, the established model, which relies on large tiers of bundled programming offered on a “take it or leave it” basis, is largely driven by factors extraneous to consumer demand in the marketplace. A La Carte programming options, if implemented on a voluntary, market-supported basis, have the potential to address

¹ A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems, *Notice of Inquiry*, MB Dkt. No. 04-207, DA 04-1454, rel. May 25, 2004.

some of the most important and currently unmet consumer demands, namely: competition, choice, and control.

It is now beyond debate that cable competition benefits consumers. RCN has seen this in its own markets. Indeed, RCN is precisely the type of competitor Congress envisioned when it opened the broadband market to competition through passage of the Telecommunications Act of 1996. For example, in its Sixth Annual Report on the status of competition in the video programming industry the FCC described in detail the benefits that consumers realized when RCN entered the Somerville, Massachusetts market.² Before RCN even started providing services in Somerville, the incumbent cable operator had begun offering a free subscription to TV Guide, an additional channel, and lower rates for equipment rentals in response to RCN's advertising campaign.³ Moreover, soon after RCN commenced providing services in Somerville, the incumbent offered consumers more choices in programming packages, reduced rates for certain premium services, and did not raise its cable rates for Somerville, although 82 other Massachusetts communities, which lacked competition, saw a 10% price increase in their standard cable service.⁴ Recent studies commissioned by Congress reach a similar conclusion on the benefits of wireline competition in the cable industry. In a recent study on cable rates, the U.S. Government Accounting Office noted that "[c]ompetition from wire-based and DBS operators leads to lower cable rates and improved quality and service among cable operators. Competition from a wire-based provider . . . is limited to very few markets. However, in those

² Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, *Sixth Annual Report*, 15 FCC Rcd. 978, paras. 227-233 (2000).

³ *Id.*

⁴ *Id.*

markets where this competition is present, cable rates are significantly lower -- by about 15 percent -- than cable rates in similar markets without wire-based competition."⁵ Competition is impaired when programmers (or, for that matter, regulators), rather than consumers, dictate what programming will be carried, how, and by which providers.⁶

Consumers also deserve programming choice. Unfortunately, programmers -- many of them owned or controlled by the largest incumbent cable operators and broadcast media conglomerates-- continue to impose tying arrangements, as well as arbitrary volume-based discounts that serve to discriminate against smaller operators and new entrants in the MVPD marketplace, and other contractual restrictions while leaning on confidentiality and most favored nations clauses (MFNs) in their agreements with larger operators as a means to preclude RCN and other competitive providers from offering innovative consumer-driven programming options.⁷

Lastly, consumers deserve control. As the Broadband Service Providers Association ("BSPA"), of which RCN is a member, compellingly argued in its initial Comments in this

⁵ U.S. Government Accounting Office (GAO), *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-8 (October 2003), at 3.

⁶ RCN agrees with many of the comments submitted in this proceeding by the American Cable Association, which outlined the numerous impediments to full and fair competition imposed by programmers, including: distribution restrictions, non-cost based price discrimination, contractual mandates regarding channel placement, tying arrangements imposed in the context of retransmission consent, etc. *See* Comments of the American Cable Association, filed in MB Dkt. 04-207.

⁷ *See* Comments of the Broadband Service Providers Association ("BSPA Comments"), filed in MB Dkt. 04-207 on July 13, 2004, at 7.

proceeding, cable consumers currently are forced to pay for programming that they not only do not want, but may find objectionable or inappropriate for their families.⁸

VOLUNTARY A LA CARTE IS THE PROPER APPROACH

RCN wholeheartedly endorses the proposal of the BSPA for support by the Federal Communications Commission (“FCC”) and Congress of a Voluntary A La Carte market test, and is prepared to participate in test marketing Voluntary A La Carte themed tier offerings. Many of the commenters in this proceeding erroneously base their opposition to a la carte programming on the assumption that the only option is mandatory, regulated a la carte on a channel-by-channel basis. RCN believes, however, that the Voluntary A La Carte proposal outlined by the BSPA offers the best option for a la carte programming that meets the needs of consumers, cable operators, and programmers. Themed tier Voluntary A La Carte would allow cable operators to offer consumers smaller programming tiers, limited to the kind or categories of programming consumers most value, while still supporting programming diversity, because less-widely viewed niche programming could continue to be bundled with similar, but more widely-viewed channels.

RCN supports and is prepared to participate in a market test of Voluntary A La Carte as outlined by the BSPA. Upon the FCC’s endorsement of the market test, RCN will approach programmers for voluntary relief from present contractual restraints in order to achieve the flexibility necessary to conduct the market test. In the event that efforts to gain flexibility from the programmers for purposes of this test are rebuffed, the FCC and, as appropriate, Congress, should be prepared to address the impediments imposed by the current, established models for programming distribution in the cable industry. These impediments are detailed in the comments

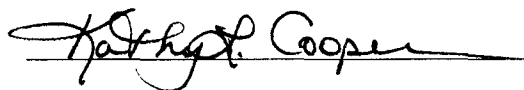
⁸ *Id.* at 8.

of the BSPA, American Cable Association, and others. In particular, competitive providers need to be assured of fair access to programming at a fair price, and relieved from tying arrangements and distribution restrictions imposed by programmers with excessive market power, such as broadcasters with retransmission consent rights, programmers controlled by the largest incumbent cable operators, and media conglomerates such as Disney and Fox.

CONCLUSION

The time has come for the cable industry to respond to consumer demand and provide more competition, choice, and control. Absent adequate market forces to ensure that consumer demands are being met, intervention by the FCC and Congress may be necessary. Such intervention, however, should be limited to support for a market test of Voluntary A La Carte, to prove out the a la carte model in the competitive marketplace, rather than mandatory a la carte imposed via government regulation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathy L. Cooper", with a long horizontal line extending to the right.

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CERTIFICATE OF SERVICE

I, Kathy L. Cooper, hereby certify that on this 11th day of August, 2004, the foregoing Reply Comments of RCN Corporation were filed electronically via the Internet to <http://www.fcc.gov/cgb/ecfs/>, and a copy served via e-mail on the following:

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